

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CRAIG CUNNINGHAM,

Plaintiff,

v.

MICHAEL MONTES, Tollfreezone.com, Inc.,
Mydataguys.com, LLC, Podmusicgear.com, Inc.,
Tollfreezone.com, Inc., dba Docauditor.com,
Tollfreezone.com, Inc., dba Mobile Trackme,
Emailmyvmail.Com, Inc., and John and Jane Does 1-10,

Case No. 16-cv-761

Defendants.

**DEFENDANTS' MOTION FOR
ORDER TO RETURN GARNISHED FUNDS**

NOW COME Defendants, by and through their attorneys, Axley Brynelson, LLP, by Kevin D. Trost, and move the Court for an order requiring Plaintiff Craig Cunningham to return funds garnished from Defendants' accounts at Wells Fargo Bank, N.A. In support of this motion, Defendants rely upon the pleadings of record, the Affidavit of Jon C. Sirlin, Esq., the Affidavit of Kevin Trost, and state as follows:

1. On July 19, 2017, the Court entered judgment against Defendants Michael Montes, Tollfreezone.com, Inc., Mydataguys.com, LLC, Podmusicgear.com, Inc., and Emailmyvmail.Com, jointly and severally in the amount of \$176,450 (Dkt 36.)

2. The court also ordered all Wells Fargo bank accounts in the names of these Defendants frozen and restrained Defendants from withdrawing or transferring funds from these accounts until further order of the court. (Id.)

3. Plaintiff obtained a transcript of the judgment and filed it in the Court of Common Pleas of Montgomery County, Pennsylvania (Case No. 2017-25050). (Affidavit of Kevin Trost, ¶ 2, Exhibit A). (See first entry under section titled “Proceedings” disclosing the filing of a certified judgment in the amount of \$176,450.)

4. Plaintiff thereafter issued a Writ of Execution to Wells Fargo Bank, N.A., based upon the Judgment. (Affidavit of Jon Sirlin, Esq., ¶ 2.)

5. Wells Fargo Bank, N.A. responded to the Writ of Execution and transferred the sum of \$9,134.96 to Craig Cunningham by check. (*Id.*, ¶¶ 4-6.)

6. On February 21, 2018, the United States Court of Appeals for the Seventh Circuit issued a final judgment vacating the entry of judgment in the District Court (Dkt 88).

7. By letter dated March 5, 2018, Defendants’ counsel requested that Plaintiff return all funds garnished from the Wells Fargo accounts. (Affidavit of Kevin Trost, ¶ 3, Exhibit B).

8. To date, Defendants have not received the garnished funds and have not heard from Plaintiff on this topic.

WHEREFORE, Defendants respectfully request the Court enter an order requiring Plaintiff to return the \$9,134.96 garnished from the Wells Fargo bank accounts within ten days or be subject to sanctions.

Dated this 20th day of March, 2018.

AXLEY BRYNELSON, LLP

s/ Kevin D. Trost

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